IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

Crl.MC.No. 2402 of 2006()

CC.554/2005 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE

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PETITIONER: ACCUSED 1 & 2

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1. INTEGRATED STOCK BROKING SERVICES
   PVT. LTD., REPRESENTED BY ITS DIRECTOR,
   REGISTERED AND HEAD OFFICE "VAIRAMS",
   3RD FLOOR, 112, THYAGARAYA ROAD,
   T.NAGAR, CHENNAI.

2. DIRECTOR,
   INTEGRATED STOCK BROKING SERVICES PVT. LTD.,
   REGISTERED AND HEAD OFFICE "VAIRAMS",
   3RD FLOOR, 112, THYAGARAYA ROAD,
   T.NAGAR, CHENNAI.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: COMPLAINANT & STATE

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1. K.ASHOK KUMAR, S/O. LATE APPUNNI
   MENON P.K., LAKSHMI HOUSE, NO.32,
   JAYANTHI NAGAR COLONY, P.T.USHA ROAD,
   KALATHINKUNNU AMSOM AND DESOM, KOZHIKODE TALUK.

2. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.N.SASI
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2402 of 2006

Dated this the 13th day of December 2006

O R D E R

The petitioners are accused 1 and 2 in a prosecution under Section 138 of the Negotiable Instruments Act. The first petitioner is a Private Limited Company represented by the second petitioner, its managing director. The crux of the allegation is that the third accused, an employee/manager of the first accused issued a cheque for discharge of the liability of the first accused to the complainant. That cheque was dishonoured attracting culpable liability under Section 138 of the Negotiable Instruments Act. The learned Magistrate has taken cognizance. Processes have been issued to all the three accused.

2. Accused 1 and 2 have come before this court with the prayer that the prosecution launched against them may be quashed. Their contention is simple. According to them, they are not the account holders. The cheque is drawn on an account maintained by the third accused in his individual capacity. That account is of course a joint account maintained by the third accused and his son. Only the third accused has signed the cheque. The petitioners contend that they have no liability whatsoever under Section 138 of the Negotiable

Instruments Act for the cheque issued by the third respondent even if the entire allegations were accepted.

3. The respondent has of course alleged that it is for the discharge of the liability of the first petitioner that the cheque was issued by the third accused to the complainant. For a moment, I shall assume that this allegation is correct. If A issues a cheque to B for the discharge of liability of C, B will certainly be entitled to prosecute A and not C. The crux of the offence under Section 138 of the Negotiable Instruments Act is not the non-discharge of the liability but only dishonour of a cheque issued for the discharge of a legally enforcible debt/liability. In these circumstances certainly the person to discharge whose liability the drawer issued a cheque is certainly not liable to face indictment along with the account holder/ drawer of the cheque.

4. In this view of the matter, the prosecution against the petitioners must certainly be held to be not justified and legally sustainable. I am satisfied that this is a fit case where powers under Section 482 Cr.P.C are to be invoked to quash the proceedings against the petitioners. Significantly, there is no assertion before me that the cheque is drawn on an account maintained by the petitioners. The only contention is that the cheque was issued by the third accused for discharge of the liability of petitioners 1 and 2.

5. In the result:

a) This Criminal Miscellaneous Case is allowed.

b) C.C.No.554/2005 of J.F.C.M-IV, Kozhikode shall stand quashed in so far as it relates to the petitioners, that is accused 1 and 2.

6. I make it clear that the quashing of the proceedings against the petitioners 1 and 2 shall not in any way fetter the rights of the complainant, if any, to recover the amount or to proceed against them for any other offences which they may have committed in respect of the transaction.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006